

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 04-109
)	
TERRANCE LARNELL COLE)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANT’S
MOTION FOR REDUCTION OF SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(2)**

AND NOW comes the United States of America, by its attorneys, David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Troy Rivetti and Cindy Chung, Assistant United States Attorneys for said district, and respectfully files this response in opposition to the defendant’s motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). Doc. No. 326.

The government has reviewed the procedural history of the defendant’s case and opposes the defendant’s motion for a reduction pursuant to Amendment 782 to the United States Sentencing Guidelines and Title 18 U.S.C. § 3582(c)(2).

“A reduction in the defendant’s term of imprisonment ... is not authorized ... if ... (B) an amendment listed in subsection (d) does not have the effect of lowering the defendant’s applicable guideline range.” U.S.S.G. § 1B1.10(a)(2) (Nov. 1, 2014). Amendment 782 did not provide a two-level reduction for offense levels based upon quantities of cocaine over 450 kilograms; rather, the base offense level in such circumstances remains at 38. See U.S.S.G. § 2D1.1(c) (Nov. 1, 2014). Therefore, defendants whose offense levels were determined pursuant to U.S.S.G. § 2D1.1, based upon a cocaine quantity greater than 450 kilograms, receive no benefit pursuant to Amendment 782. U.S.S.G. §1B1.10(a)(2)(A).

The defendant is ineligible for a reduction because his offense level was determined based upon a cocaine quantity of 2500 kilograms pursuant to U.S.S.G. § 2D1.1. See Addendum to Presentence Investigation Report at 2; Court Slip at 2; Statement of Reasons at 1 (indicating a total offense level of 43, calculated using a base offense level of 38). Under Amendment 782, the base offense level for a quantity of 2500 kilograms cocaine remains at 38. U.S.S.G. § 2D1.1(c) (Nov. 1, 2014). Because the defendant's original guideline range has not been reduced, the defendant is not entitled to any reduction. U.S.S.G. §1B1.10(a)(2)(A).

Wherefore, the government respectfully submits its response in opposition to the defendant's motion for a reduced sentence.

Respectfully submitted,

DAVID J. HICKTON
United States Attorney

s/ Troy Rivetti
TROY RIVETTI
Assistant U.S. Attorney
U.S. Post Office and Courthouse
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219
(412) 894-7410 (Phone)
troy.rivetti@usdoj.gov
PA ID No. 56816

s/ Cindy Chung
CINDY CHUNG
Assistant U.S. Attorney
(412) 894-7397 (Phone)
Cindy.Chung2@usdoj.gov
PA ID No. 317227